

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-08-2006

CORAM

THE HONOURABLE MR. JUSTICE M.E.N.PATRUDU

W.P. Nos.6447 & 17827/1995 1142/99 &
W.M.P.No.1398/99

W.P.No.6447/95

- 1.Sarojammal
- 2.Rajammal
- 3.S.Ravichandran
- 4.J.Shanthi
- 5.S.Nandagopal
- 6.B.Varalakshmi
- 7.Dhansekaran

.... Petitioners

Versus

- 1.Executive Officer
Arul Migu Chellapillaiar Temple
Otteri,
Madras 600 012.

- 2.Presiding Officer
cum Special Dy. Collector
Revenue Court
Cuddalore.

... Respondents

W.P.No.17827/95

- 1.K.Venu Naidu
- 2.S.Munusamy
- 3.K.Jagadeesan
- 4.M.Radhakrishnan
- 5.M.Anandan
- 6.K.Subramani
- 7.Indirani
- 8.K.Munusamy
- 9.V.Gajapathy
- 10.S.Ramesh

. . . Petitioners

Versus

1. The Commissioner
Hindu Religious and Charitable Endowments
Nungambakkam High Road
Nungambakkam, Madras - 600 034.

2. The Deputy Commissioner
Hindu Religious and Charitable Endowments
Nungambakkam High Road
Nungambakkam, Madras - 600 034.

3. The Executive Officer
Arulmigu Chellapillaiyar Thirukkoil
No.1, Konnur High Road
Ottery, Madras - 600 012.

4. Sarojammal

5. Rajammal

6.S.Ravi

7.J.Shanthi

8.S.Nandagopal

9.B.Varalakshmi

10.Dhanakumar

. . . Respondents

W.P.No.1142/99

1.Sarojammal

2.Rajammal

3.S.Ravichandran

4.J.Shanthi

5.S.Nandagopal

6.B.Varalakshmi

7.Dhansekaran

. . . Petitioners

Versus

1. The Commissioner
Hindu Religious and Charitable
Endowments
Nungambakkam High Road
Chennai.

2. The Executive Officer
Arulmigu Chellapillaiyar Temple
No.1, Konnur High Road
Otteri, Chennai -12.

3. The Presiding Officer-cum-
Special Deputy Collector
Revenue Court, Cuddalore
Cuddalore District.

. . . Respondents

W.P.No.6447/95:

Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus to call for the records in the application relating to eviction proceedings P.T.A.No.128/93 order dated 22.9.94 on the file of the second respondent. In respect of the land in survey No.260/1 Nanja Land measuring 10.83 acres

situated at Koilkuppam village, Perumalpattu Post, Tiruvallur Taluk, Chengai M.G.R. District and the order P.T.A.No.128/93 dated 28.3.95 and quash the said orders and direct the second respondent to decide and consider the application of the writ petitioners on merits.

W.P.No.17827/95:

Petition is filed under Article 226 of The Constitution of India to issue a Writ of Certiorarified mandamus to call for the records relating to the order of the first respondent in Commissioner's proceedings in Na.Ka.No.57271/1995-R2 dated 20.11.95 on the file of the first respondent and quashing the same and directing the respondents not to proceed any further on the basis of the impugned order and not to give any effect to the impugned order.

W.P.No.1142/99:

Petition is filed under Article 226 of The Constitution of India to issue a Writ of Certiorarified mandamus to call for the Notification No.1/99 dated 11.1.99 for General Auction for Agricultural lease of the lands consisting of 10.83 acres situated in S.No.260/1, Koilkuppam village, Tiruvellore District, belonging to Arulmigu Chellapillaiyar Tirukoil, No.1, Konnur High Road, Otteri, Chennai 600 012, belongs to Hindu Religious charitable Administration Department, Tamil Nadu Government passed by the second respondent and quash the same as illegal improper, unreasonable, arbitrary against the H.R. & C.E. Rules and also against this order of Court in W.M.P.No.10431/95 in W.P.No.6447/95.

For petitioners :Mr.M.V.Muralidharan
in W.P.No.6447/95 &
W.P.No.1142/99
Mrs.Damithalakshmi
in W.P.No.17827/95

For respondents :Mr.V.Raghavachari for R1
in W.P.No.6447/95
Mrs.C.K.Vishnu Priya
Government Advocate for R2
in W.P.No.6447/95
Mr.M.R.Murugesan
Government Advocate for R1 &
R2 in W.P.No.17827/95
Mr.P.Subramanian for R3
in W.P.No.17827/95
Mr.M.R.Murugesan
Government Advocate for R1
R3 in W.P.No.1142/99
Mr.Akshay Sharma for R2
in W.P.No.1142/99

COMMON ORDER

<https://hcservices.ecourts.gov.in/hcservices/>

Arulmigu Chellapillaiyar Temple, Otteri, is driven to litigation due to leasing of temple lands.

2. Since all the three Writs are inter connected they are heard together and disposed of by a common order.

W.P.No.6447/95

The legal heirs of the original lessee by name Subbarayulu Naidu are the petitioners. The Executive Officer of the temple is the first respondent and the Presiding Officer-cum-Special Deputy Collector, Cuddalore, who has passed the impugned order, is the second respondent.

W.P.No.17827/95

The petitioners are claiming that they are the lessees of the temple and the petitioners in W.P.No.6447/95 are not the lessees.

W.P.No.1142/99

The petitioners in W.P.No.6447/95 have filed this writ and obtained an interim stay of the fresh auction.

3. Facts:

There is no dispute with regard to the ownership of the temple as far the lands leased out. It is stated that Shri.Subbarayalu Naidu was cultivating tenant of those lands after those lands are leased out strictly in accordance with the provisions of Religious Institutions (Lease of immovable property) Rules, 1963. The conditions of lease was also mentioned.

4. While so, in P.T.A.No.128/93 was filed before the Presiding Officer-cum-Special Deputy Collector, Revenue Court, Cuddalore, the temple authorities have raised a plea that the said Subbarayalu Naidu has become defaulter as he is not depositing the amount for the agricultural products from the beginning and the arrears of rent by him is to the tune of Rs.39,930/- in respect of the lease lands.

5. The second respondent has directed the original lessee to pay the arrears but on 6.2.94 the original lessee died and his legal representatives came on record and in this process there was delay. After that, final orders are passed on 22.9.94 by the second respondent directing to pay the entire arrears failing which an eviction order is ordered.

6. Since the arrears are not paid, eviction is order has become final.

7. Aggrieved the same, review petition was filed and the same is also dismissed. Aggrieved by the same, W.P.No.6447/95 was filed by the petitioners. This Court has given a direction to the petitioners to pay the arrears. It is stated that the petitioners have paid all the arrears as on the date of the interim order and thereafter, they are not paying any amount and became defaulter. Since they did not

pay any arrears and since there is an eviction order the respondents have proceeded with fresh auction and on 5.9.98 the Board of Trustees of the temple passed a resolution authorising the Executive Officer to proceed with auction and accordingly on 16.9.98 the Executive Officer along with the Tahsildar concerned verified the lands and found that the said land is totally vacant and no one is in occupation hence notification was issued strictly in accordance with Rule (4) and auction date was fixed on 28.1.99.

8. It is stated that one person by name M.Paranthaman was a successful bidder and he deposited the E.M.D. and also he paid a sum of Rs.25,000/- as per the condition of the auction notice by way of donation to the temple and being a successful bidder he has paid a sum of Rs.57,974/- in lieu of 140 bags of paddy and this process was completed on 28.1.99 according to the learned counsel for the temple. While so, on the same day i.e. On 28.1.99, the original lessees have approached this Court and filed W.P.No.1142/99 and obtained an interim stay not to conduct the auction. In fact the auction was completed by then was stayed.

9. It is stated by the learned counsel for the respondents that the said order was communicated to them on the next day by then auction was confirmed. But there is an interim stay, they did not confirm the auction in favour of the said Paranthaman, as a result of the temple lands are still vacant and no body is in possession and the temple is not getting any income.

10. After perusing the entire records, it is noted that except the amount deposited by the original lessees in pursuance of the direction of this Court in W.P.No.6447/95, the temple has not receive any revenue from the leased lands from the year 1991 onwards and it is purely because of the default attitude of the lessees.

11. While so, the petitioners in W.P.No.17827/95 raising a claim stating that they are the lessees of the temple and temple lands are leased out in their favour. They are relying on the rent receipts issued by the then Administrative Officer for a total period of 10 years for the pasali 1395 to 1404 i.e. 1.7.85 to 30.6.95.

12. At this stage, it is relevant for the Court to notice, the fact communicated to the Court by the counsel for the temple that the said Administrative Officer was subjected to disciplinary action for issuing false and fake rent receipts known as kist and he was removed from service for indulging such illegal activities and he is no more in service.

13. However, it is clear that there is no lease sanctioned by the Commissioner of the Hindu and Religious and Charitable Endowments in favour of these petitioners and they are relying only on the forged rent receipt. The writ petition No.17827/95 has been filed to drag the case. Hence it is liable to be dismissed.

14. Heard the arguments of the learned counsel for the petitioners and the respondents in all the petitions.

15. Perused the relevant records.

16. The affidavit of the petitioners clearly discloses that there was a default on the part of the original lessee. It also clarified that as per the order in P.T.A.No.128/93 dated 28.3.95. The eviction order has been passed and aggrieved by the same the petitioners approached this Court and deposited the arrears due as on that date. Thereafter, they are not paying any amount. While so, a fresh auction was fixed and conducted on 28.1.99 and there was a successful bidder and he has deposited the amount. The bid was not confirmed in view of the interim order obtained by the petitioners after completion of the auction. Hence I hold that the interim stay is infructuous as by the time of granting interim stay, the auction was already completed and the successful bidder has already deposited the amount.

17. It is stated that the said person is not claiming any relief in the dispute, but he has right to receive his amount deposited.

18. Now, the prayer of the temple authorities is to permit them to go for a fresh auction. Whereas the prayer of the petitioner is to continue them in the scheduled lands.

19. The learned counsel for the petitioners stated that they are in possession of the property. The temple authorities are claiming that the possession is in favour of temple.

20. Further the petitioner states that they yielded agricultural crops and the fresh auction may be conducted after 3 months from this date and not immediately so that they will take back the crop: No document is produced in this respect.

21. Rule 2 of the Religious Institutions (Lease of immovable property) Rules 1963 states that

"lease of immovable property and rights belonging to a religious institutions shall be made by public auction. The auction shall originally be conducted in the place in which the property is situated or the rights existed".

22. In the instant case, the temple authorities wanted to go for a public auction which is mandatory as per Rule 2. When the temple authorities wanted to go for public auction, the petitioners can not object. Admittedly they are the defaulters; If there are interested they can participate in the fresh auction. The ownership of the lands of the temple are not in dispute and the lessee can not claim that there will be no auction or it has to be conducted after 3 months.

23. In the instant case, there is no document on behalf of the petitioners to show that they are continuing in the possession of the temple lands. The mere oral statement of the learned counsel for the

petitioners that they have yielded some produce and they are in possession can not be accepted. The Revenue authorities who is the Tahsildar of the Cuddalore District, inspected the temple lands before issuing notification, verified and found that no one was in possession. Subsequently, on 16.9.98 a fresh auction date was fixed and in fact auction was conducted. Hence, it is absurd to contend that the petitioners are still in possession of the temple lands. Therefore, the said argument is rejected.

24. Considering all the aspects in this case, this Court is giving direction to the temple authorities to proceed with the public auction immediately preferably within 30 days from the date of receipt of copy of this order and also by issuing auction notification as provided under Section 4 of the Rules and proceed with the auction as per Rules.

25. With the above observation these writ petitions are dismissed with costs. A sum of Rs.5,000/- (Rupees five thousand only) to be payable by the writ petitioners in W.P.No.6447/95 & 1142/99 and a sum of Rs.3,000/- (Rupees three thousand only) to be payable by the writ petitioners in W.P.No.17827/95 to the respondent. Consequently, connected WMP is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

jikr

To

1. The Commissioner
Hindu Religious and Charitable Endowments
Nungambakkam High Road
Nungambakkam, Madras - 600 034.
2. The Deputy Commissioner
Hindu Religious and Charitable Endowments
Nungambakkam High Road
Nungambakkam, Madras - 600 034.
3. The Executive Officer
Arulmigu Chellapillairayar Thirukkoil
No.1, Konnur High Road
Ottery, Madras - 600 012.

4.Presiding Officer
-cum- Dy. Collector
Revenue Court
Cuddalore.

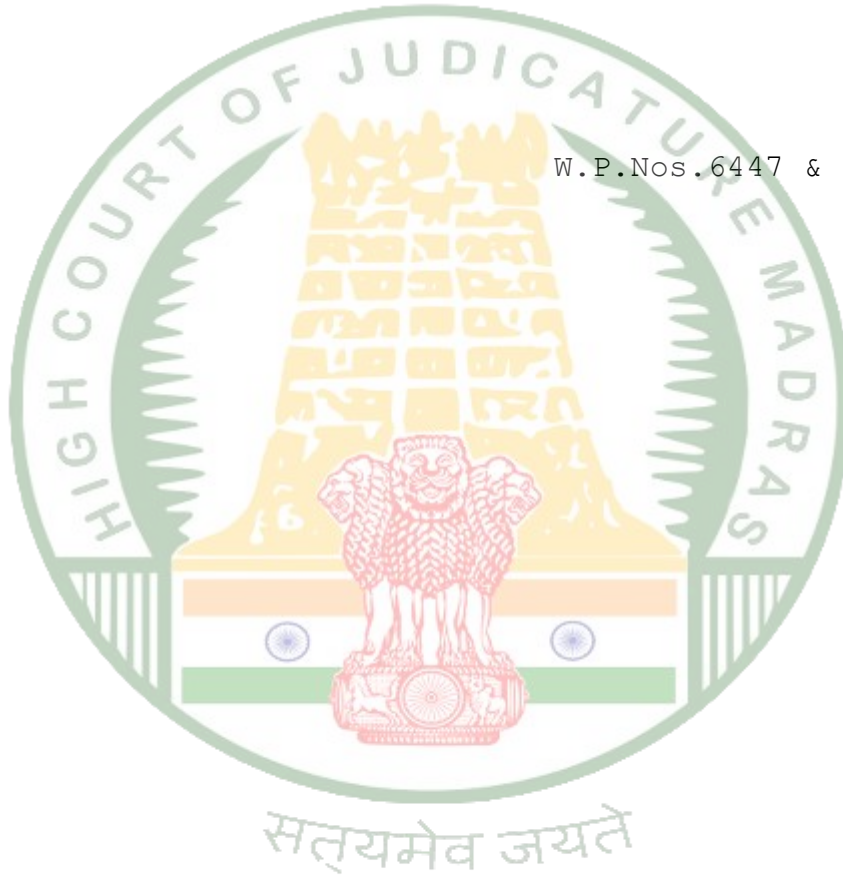
+3ccs to Spl. Govt. Pleader HR & CE Sr 38158,38439, 38157

+3ccs to Mr.M.V.Muralidharan,Advocate Sr 38197, 38195 & 38196

+1cc to Mr.P.Subramanian, Advocate Sr 38197

TR (CO)
km/7.9.

W.P.Nos.6447 & 17827/95 & 1142/99



WEB COPY